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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,666	01/15/2002	Michael E. Barrett	101-0005US	5277

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025-1030

EXAMINER
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RIMELL, SAMUEL G

ART UNIT	PAPER NUMBER
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2164

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/047,666

Applicant(s)

BARRETT ET AL.

Examiner

Sam Rimell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**SAM RIMELL**  
**PRIMARY EXAMINER**

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 6-8 are rejected under 35 U.S.C. 101 because the claimed invention is non-statutory.

Claim 6: Claim 6 is addressed to an apparatus having a database containing an enhanced popularity score and a module. A database is a software system which manages data, and thus is not a tangible result. A popularity score is merely a number or value is not itself tangible unless displayed as output to a user. A module may be lines of code which are not tangible unless encoded on a compute readable medium, and claim 6 does not recite such medium. Accordingly, claim 6 does not meet the requirement for tangibility.

MPEP 2106 Section II A states:

*"The claimed invention as a whole must accomplish a practical application. That is, it must produce a "useful, concrete and tangible result" (emphasis added). State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research."*

Claims 7-8: Depend on claim 6.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 9-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 9: Claim 9 has been amended to define the creation of a “modified use history”. No such construct is recited in the original specification. Paragraph 0013, line 4 of the original specification does refer to a “time history” but does not state that a modified time history is created from a collected time history.

Claims 10-14: Depend on claim 9.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-8 and 15-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Edlund et al. (U.S. Patent 6,546,388).

Claim 1: Col. 8, line 40-62 describe the performance of a search query. The query produces search results. The search results are weighted using a calculated relevancy score (col. 10, lines 60-63, describing steps 5-6). The score is based on popularity counts, which are derived from selecting specific URLS (col. 9, line 49), in other words, derived by clicking (col. 3, lines 8-9).

The popularity counts are an inflation factor. As described at col. 9, lines 45-50, the popularity count is only incremented for the newest version of a website (version 0), which means that the popularity count weighs the newest version more heavily than any previous versions. The relevancy score thus becomes an enhanced score based on popularity (an enhanced popularity score).

Col. 9, lines 35-40 describe one form of generated search report, although the results produced by clicking on a URL will also constitute a search report.

Claim 3: The ranking scheme disclosed Edlund et al. involves taking a search result (based on a submitted search request) and a relevancy score and weighting the search results based on the relevancy score. As described at col. 9, lines 45-50, the popularity count is derived by selecting URLs (i.e. clicking) to generate the relevancy scores and the popularity count is only incremented for the newest version (version 0) of a website. This means that the popularity count weighs the newest version more heavily than any other version. The relevancy score thus becomes an enhanced score based on popularity (an enhanced popularity score). Clicking on URLs sends results to a user in the form of documents associated with the URL.

Claim 4: The popularity counts described at col. 9, lines 36-42 form a weighting value for each search result. This weighting value is an inflation score. The inflation score is adaptive in that it can constantly change (the popularity counts change as the website receives more hits).

Claim 5: The overall rank applied to the search results is a blend of three factors: (1) content relevance value (2) popularity; and (3) document recency.

Claim 6: The table illustrated in col. 9, lines 36-42 is a database. It is a relational database having rows related to columns. The popularity score is shown in the far right column. The score

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is enhanced by the inclusion of version numbers. The URLs are the information that is indexed in the database. The popularity counts are the claimed popularity scores. As described at col. 9, lines 45-50, the popularity count is only incremented for the newest version of a website (version 0). This means that the popularity count weights the newest version more heavily than any other previous version.

Claim 7: The information in the database of col. 9, lines 36-42 are URLs derived from the Internet.

Claim 8: Each URL is a discrete piece of data that is wholly contained with the database table of col. 9, lines 36-42.

Claim 15: The popularity counts (number of hits over time) are the time decay rates. As seen in the table of col. 9, lines 35-42, there are highest and lowest decay rates (highest and lowest popularity counts). The enhanced popularity scores are the calculated relevancy values based on the popularity counts (col. 10, lines 60-61). The use history is the complete table at col. 9, lines 35-42. The enhanced popularity scores can be calculated for each search query, which means that there can be two or more such scores. The popularity counts are the time decay rates and are incremented only for the newest version of a web site (col. 9, lines 45-50). If no additional websites appear, this count will increase over time and exceed the counts for previous versions.

Claim 16: The weighting factor is popularity count, which is a rate of use of certain URLs during the time period of measurement.

Claim 17: See remarks for claim 11.

Claim 18: Popularity counts correlate to website traffic.

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Claim 19: The popularity counts are calculated by the computer system incrementing a counter. A calculation is readable as an estimate, lacking any further details on how the estimate is made or what kind of estimate is made.

Claim 20: Col. 8, lines 66-67 calls for the retrieval data from documents and the calculation of the documents age. The only manner in which such a calculation could be performed is if the document was time and date stamped and the calculation of document age determined from the time and date stamp. The age of the document is input to a relevancy calculator (col. 9, lines 1-2) which calculates a relevancy score (col. 10, lines 60-61). This score reads as the claimed enhanced “population” score. The enhanced “population” score also considers popularity counts that are only incremented on the newest version of a website (col. 9, lines 45-50). As a result, the popularity count used to form the enhanced “population” score weighs more heavily on the newest version of a website than on any previous version.

Claim 21: The age of the document is calculated (col. 8, lines 66-67).

#### Remarks

Applicant’s amendments have overcome the rejections under 35 USC 101, except for claims 6-8. No tangible result is found to be recited for claims 6-8, and therefore the rejection is sustained for these claims.

The rejection under 35 USC 112, first paragraph is also sustained for claims 9-12. No reference is made in the specification to a modified time history. Pursuant to applicant’s discussion, paragraph 0013 of the original specification has been reviewed. While this paragraph

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does make reference to a “time history” it does not state that a modified history is actually created from a collected history.

The rejection of claims 1, 3-8 and 15-21 under 35 USC 102(e) are sustained. Applicant asserts that Edlund et al. is not prior art, and asserts a “right” to swear behind the reference at a “later date”. In the previous office action, the examiner requested that applicant provide evidence in support of this assertion. Applicant has not provided any evidence in support of this assertion, so examiner maintains that Edlund et al. is prior art, in view of the absence of any evidence to the contrary.

Applicant argues that Edlund et al. does not weight a recent click more heavily than an older click. This argument is not correct. As established in the discussion associated with claim 1, the popularity counts are derived from selecting URLs, and that such selection is achieved by clicking. The popularity count of only the most recent version of the URL (version 0) is incremented, so the weighting is accumulating only to the most recent version. Accordingly, the clicking weighs more to the most recent version than to the older versions.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,



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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (571) 272-4084.



Sam Rimell  
Primary Examiner  
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